

Prepared by:

NJDEP

File No. _____

DECLARATION OF RESTRICTION FOR MODIFIED TRANSITION AREA

The Declaration of Deed Restriction is made this _____ day of _____, 20__, by

_____ having an office at or residing at _____,

hereinafter referred to as "Declarant."

WITNESSETH

Whereas, the Declarant is the owner of certain real property located in the Township of _____, _____ County, New Jersey, designated as Lot _____, Block _____, on the official Tax Map of the Township of _____ (hereinafter "the Property"); and

Whereas, wetlands play a significant role in the maintenance of environmental quality on a community, regional, and statewide level; and

Whereas, wetlands transition areas are integral portions of a freshwater wetlands ecosystem; and

Whereas, the Declarant has obtained a Freshwater Wetlands Transition Area Waiver ("TA Waiver") # _____ - _____ - _____ FWW _____, which establishes a modified transition area, from the New Jersey Department of Environmental Protection ("DEP") pursuant to the Freshwater Wetlands Protection Act ("FWPA"), N.J.S.A. 13:9B-1 et. seq.; and

Whereas, the TA Waiver issued to the declarant is conditioned upon the Declarant's recording of a Department approved deed restriction, pursuant to N.J.A.C. 7:7A-6.1(h), for the modified transition area more particularly described on attachment A (hereinafter metes and bounds description of the "Modified Transition Area"), and upon the imposition by the Declarant of a deed restriction to preclude subsequent development

of the Modified Transition Area without prior Department approval as outlined below;
and

Whereas, the Declarant desires and intends to restrict subsequent development of the Modified Transition Area in accordance with the covenants, conditions, and restrictions set forth herein;

Now therefore, in consideration of the facts recited above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the Freshwater Wetlands Act, N.J.S. A. 13:9B-1 et seq., and associated regulations, N.J.A.C. 7:7A-1 et seq., the Declarant, for itself, its successors and assigns, hereby covenants and agrees with the State of New Jersey, Department of Environmental Protection that the modified transition area is hereby made and declares to be subject in perpetuity to the following covenants and restrictions:

1. The following activities shall not occur within the Modified Transition Area, unless the Department makes the findings specified below.
 - (a) Removal, excavation, or disturbance of the soil;
 - (b) Dumping or filling with any materials;
 - (c) Erection of structures;
 - (d) Placement of pavements; and;
 - (e) Destruction of plant life which would alter the existing pattern of vegetation;
 - (f) Any other activities constituting a regulated activity under N.J.A.C. 7:7A-2.6, as amended.
2. These activities shall only occur if the Department finds:
 - (a) There is compelling public need for the activity greater than the need to protect the modified transition area;
 - (b) That the activity has no practicable alternative which would:
 - i. Not involve a transition area;
 - ii. Involve a transition area but would have less adverse impact on the transition area and the adjacent wetland;
 - iii. Not have other significant adverse environmental consequences, that is, it shall not merely substitute other significant environmental consequences for those attendant on the original proposal.
3. The covenants and restrictions set forth herein shall run with the land and be binding in perpetuity upon the Declarant, its successors and assigns, in perpetuity, and all parties having or acquiring any right, title or interest in the property or any part thereof. Notice of this deed restriction shall be given to all holders of any easements in the Modified Transition Area by the Declarant within 30 days of recording by the County Clerk.

4. It is the purpose of the Declaration to assure that the modified transition area will be maintained as such and to prevent any disturbance or development of the property. To carry out this purpose, the following rights are granted to the State of New Jersey, Department of Environmental Protection by this Declaration:
 - (a) To enter upon the property in a reasonable manner and at reasonable times so as to assure compliance with the provisions of said restrictions.
 - (b) In addition to the exercise of any other statutory or common law right, to enjoin any activity on, or use of, the property that is inconsistent with the purpose of these conservation restrictions and to enforce the restoration of such areas or features of the property that may be damaged by inconsistent activity or use.
5. The Declarant intends that enforcement of the terms and provisions of the deed restriction shall be at the discretion of the State of New Jersey and that any forbearance on behalf of the State of New Jersey to exercise its rights hereunder in the event of any breach hereof by the Declarant, its successors or assigns, shall not be deemed or construed to be a waiver of the State's rights granted hereunder in the event of any subsequent breach. This shall be true regardless of the number of breaches of the restriction, condition or covenant which occur, or the length of time it remains unenforced.
6. The Declarant reserves to itself, its successors or assigns, all rights as to owners of the property, including the right to engage in all uses of the property not inconsistent with the purpose of these restrictions and the right to the property in accordance with N.J.A.C. 7:7A-2.6(b).
7. No additional right of access by the general public to any portion of the property is conveyed by this instrument.
8. The Declarant agrees to bear all costs and liabilities of any kind related to the operation, upkeep and maintenance of the property. The Declarant shall be responsible for acts of its own negligence consistent with the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:8-1 et seq.
9. All notices, consents, approvals or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor in interest.
10. The Declarant agrees that the terms, conditions, restrictions and purposes of this instrument will be inserted in any subsequent deed, lease, sub-lease or other legal instrument by which the Declarant divests itself of any interest in the property.

11. The NJDEP agrees that it will assign its rights under this instrument only to another governmental body or a charitable conservancy, and only in accordance with N.J.S.A. 13:8B-1 et seq. and N.J.S.A. 13:9B-1 et seq.
12. Notwithstanding anything contained herein to the contrary, any modification or termination of this Declaration shall require the prior written approval of the NJDEP, its successor or assign.
13. If any provision of this Declaration or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of the Declaration, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.
14. This declaration of restriction shall survive any merger of the fee and restriction interest in the deed restricted areas.

To Have and to Hold unto the New Jersey Department of Environmental Protection, its successors and assigns forever. The covenants, terms, conditions, restrictions and purposes imposed with this declaration shall not only be binding upon the Declarant but also upon its agents, personal representatives, assigns and all other successors to it in interest, and shall continue as a servitude running in perpetuity with the property.

In Witness Whereof, the Declarant has set its hand and seal on the day and year first above written, and directs that this instrument be recorded in the office of the _____ County Clerk.

_____ (Declarant)

_____ (signature names and title)

ATTEST:

, Secretary

(Seal)

STATE OF (fill in name)
COUNTY OF (fill in name)

Be it remembered that on this _____ day of _____, 20____, before
me, the subscriber, a Notary Public of New Jersey, personally appeared :

_____, and he thereupon acknowledged that he
signed the foregoing instrument in such capacity, [optional language to be inserted if the
deed restriction is being filed by a corporation] (that the seal affixed to said instrument is
the corporate seal of said corporation), and that said instrument is the voluntary act of
deed of said corporation or person, [optional language to be inserted if the deed
restriction is being filed by a corporation] (made by virtue of authority from its Board of
Directors.)

A Notary Public of _____

My Commission Expires: _____